access providers ("CAPs") or subscribe to LEC special access services. Calls placed over CAPs normally bypass the LEC central office entirely. And calls routed over special access lines similarly are not processed by the LEC central office. Such CAP and special access services are used today by a substantial proportion of hotels, hospitals, universities, office parks, airports, amusement parks and other call aggregators. Presumably, billed party preference will not work there and the existing system of presubscription will prevail.

The increasing use of automated store and forward devices raises similar problems. These devices enable the originating pay telephone or PBX to collect calling card information from "0+" callers. The call is then placed by the CPE as a "1+" type DDD call. The LEC end office properly perceives the call to be a routine "1+" call which should be routed to the presubscribed IXC. Such store and forward devices have proven immensely popular among call aggregators. They have been installed in hundreds of hotels and many thousands of payphones. Again, in these locations, billed party preference simply will not work.

Finally, it remains unclear how practical it will be for hundreds of small independent LECs to install the billed party preference software, deploy SS#7 and AABS, etc., as required to fully implement the billed party preference plan envisioned by the Commission. It seems likely that a significant number of such small LECs will not be able to participate in the system in the near future.

Taken in combination, these circumstances insure that the billed party preference system will be inoperable at many aggregator locations. Indeed, these are the very locations where "0+" dialing is most prevalent. Importantly, consumers will have no way of determining in advance where billed party preference applies and where it does not.

The resulting lack of uniformity is bound to be frustrating to callers. As OSPs deemphasize the use of carrier access codes, end users will become increasingly confused on how to reach their preferred carrier. Notably, the fact that the system cannot be used from so many aggregator locations also further reduces the number of callers who really benefit from billed party preference.

III. The Extraordinary Expense of Billed Party Preference Far Outweighs Any Perceived Benefits.

As the Commission observed in the NPRM, LEC estimates of the cost entailed in developing and implementing billed party preference vary widely. Given the enormous disparity in the cost estimates, it is doubtful that any of them are very reliable. The estimates made by the principal LEC advocates of billed party preference -- such as Bell Atlantic and Ameritech -- must be regarded with special skepticism.

However, whatever the precise number is, it is evident from filings made previously that the cost will be huge.

PacTel, for example, has projected a cost for its region of $200 million.[26] Assuming a roughly equivalent expense for other RBOCs, this translates into a $1.4 billion dollar investment for the RBOCs alone. AT&T has estimated the expense attributable to its "0+" traffic at $560 million.[27] Depending upon who is correct, the cost of billed party preference ranges between $0.42 and $0.96 for every "0+" call placed last year.[28] Obviously, this expense will be charged by LECs to OSPs and in turn be reflected in significantly increased rates for operator services.

The expense is even more shocking when judged in light of the few "0+" callers who stand to benefit from billed party preference. As explained previously herein,[29] over 60 percent of "0+" callers already are routed directly to their preferred carrier. If the entire cost of billed party preference is assigned to the remaining callers, who at least theoretically benefit by it, the cost increases to between $0.95 and $2.18 per call.[30] That is a terribly high price to

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[26] PacTel Supp. Reply at 4, RM-6723 (filed Dec. 23, 1991).

[27] AT&T Supp. Comments at 3 RM-6723 (filed Nov. 22, 1991).

[28] Based upon a total of over 1.3 billion "0+" calls as reported in The Operator, January 1992, p. 7.

[29] See Section II.A., *supra*.

[30] Moreover, this analysis ignores the sizeable investment which IXCs must make to interface with billed party preference. These costs will drive operator services rates up even further.

pay for the privilege of not dialing a 5 digit carrier access code. It is hard to see how billed party preference can survive any serious cost/benefit analysis.

IV. Mandatory Use of Billed Party Preference Will Stifle Innovation and Technological Development.

The Commission has specifically sought comment on the issue of whether Part 68 of its rules should be amended to preclude traffic aggregators and payphone providers from using automatic dialing mechanisms to program their phones to dial around billed party preference.[31] Presumably, the Commission is considering whether such entities must disable their store and forward devices as well.[32] CompTel strongly opposes any such requirements.

Autodialers and store and forward devices have proven to be important technological innovations. They have enabled customers to make more efficient use of their networks and design their networks to meet their own needs. Importantly, they have greatly reduced the reliance of customers on any particular carrier, enabling them to utilize multiple IXCs and purchase unbundled LEC services. For those reasons, such devices have achieved wide popularity.

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[31] NPRM at ¶ 31.

[32] See id. at ¶ 28 n. 39 (requesting comment on the impact billed party preference would have on "smart payphones").

It would be incredibly short-sighted to substitute the judgment of the federal government for the economic choice already made by the market. The resulting stranded investment would serve as a potent market signal not to invest in either the development or deployment of new technology for fear that the government will later regulate the resulting advances out of existence.

Moreover, the disabling of such devices will have the unintended effect of further entrenching the LECs' monopoly power. Autodialers and store and forward devices are important parts of a general trend to distribute network intelligence to customer premises.[33] By condemning the technology, the Commission would establish the LECs as unavoidable gatekeepers for all transient calling, providing them with the ability to exploit their monopoly power in ways which cannot even be envisioned today. Providing the LECs with such new monopoly power seems flatly inconsistent with recent FCC policy encouraging competition in the local exchange.

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[33] The Commission's proposal is akin to ordering PBX users to decommission their CPE in favor of LEC Centrex services. The Commission clearly would not seriously consider such an anticompetitive requirement in the "1+" market, and it should not approach the "0+" market differently.

V. **Billed Party Preference Will Have a Devastating Economic Impact Upon Call Aggregators Who Depend Upon Their "0+" Commission Stream.**

The Commission believes that billed party preference would benefit the public by "redirecting the focus of OSP competition for public phone traffic towards the end user and away from the recipient of 0+ commissions".[34] This attention to the legitimate rights and needs of end users is laudable. But the Commission goes too far in ignoring the legitimate interests and concerns of call aggregators. The Commission should abandon the current system of premises owner presubscription only if billed party preference offers important new benefits to end users which outweigh the interests of aggregators in the status quo. Billed party preference fails this test.

The notion that property owners must be allowed to recover fair compensation for the use of their facilities is fundamental to our economic system. The anticipation of compensation is not only fair, it is right. The profit motive drives the decision to invest. It is precisely this profit motive that has led entrepreneurs to install 225,000 private payphones and thousands of hotels to invest in state-of-the-art PBXs and call accounting systems. These investors are able today to recover this investment by collecting "0+" commissions from their presubscribed OSPs.

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[34] NPRM at ¶ 13.

Under billed party preference such "0+" commissions will disappear and the incentive to invest will vanish with them. The "compensation" prescribed by the Commission for the delivery of access code calls is woefully inadequate to support any investment in new payphones. Worse yet, the implementation of billed party preference will result in an immediate and sizeable revenue reduction for most call aggregators. APCC, for example, estimates that over 40 percent of private payphone revenues are derived from the payment of commissions by OSPs.[35] The vast majority of call aggregators are small businesses which cannot offset these losses elsewhere, and many can be expected to fail as a direct consequence of the Commission's proposed action. At a time when the nation is struggling to emerge from a crippling recession, CompTel respectfully suggests that the FCC should take care not to take any action which needlessly causes business failures and restrains investment -- especially when the proffered option is as flawed as billed party preference has been demonstrated to be herein.

CompTel certainly does not propose that the economic rights of call aggregators cannot or should not be limited by the Commission. The FCC can and should regulate as required to insure that call aggregators do not exploit end users.

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[35] Comments of the American Public Communications Council on CompTel's Emergency Motion at Ex. 2, CC Docket 91-115 (filed Feb. 10, 1992) (reporting $36.1 million in commission revenues with a total revenue of $89.1 million).

But the Commission already has established a system which strikes a fair balance between the interests of end users and aggregators -- i.e. "dialing party preference." End users are free to choose the presubscribed OSP by dialing "0+" or use any other OSP by dialing a carrier access code. And aggregators may presubscribe "0+" services to the carrier of their choosing. The most important interests of both end users and aggregators are fully protected, leaving one to wonder why the Commission would sacrifice the property rights of aggregators by mandating billed party preference.

VI. If Billed Party Preference is Required, Separate "0+" Balloting Must Be Conducted.

Should the Commission elect to mandate a billed party preference system, CompTel strongly suggests that the Commission invite further comment on the issue of the "process by which a 0+ carrier should be assigned to each telephone line."[36] Given that the comments herein must address whether to adopt billed party preference at all, and if so, what the scope of billed party preference should be, it is simply unrealistic to expect meaningful and detailed comments on specific implementation procedures as well. But these procedures could be pivotal to preserving any possibility of effective competition in "0+" services, and to affording the hundreds of affected companies any fair

[36] NPRM at ¶ 33.

opportunity to offer service in a billed party preference environment.

However, if billed party preference were adopted, CompTel's strong position is that the Commission must order a separate round of "0+" service balloting to consumers. Simply assigning subscribers to their existing "1+" IXC would immediately drive many of the most promising "0+" competitors from the market overnight.

Precisely because the current "0+" system is based upon presubscription, most OSPs today provide "0+" services to aggregator lines virtually exclusively, and serve few, if any, "1+" customers. These OSPs have developed sophisticated operator service call handling systems which they could employ efficiently and effectively in a billed party preference environment, but they would be denied the opportunity by the assignment of all "0+" traffic to existing "1+" providers.

Indeed, any system which would assign or default "0+" traffic to existing "1+" IXCs is flatly inconsistent with the Commission's stated intention of increasing competition for end users. If customers are simply assigned or defaulted to existing presubscribed "1+" IXCs, there would be little incentive for such IXCs to compete aggressively for "0+" traffic. They would be able to sit back and reap a traffic windfall while watching OSPs who lost the traffic swiftly exit the market.

Moreover, there are practical reasons why separate "0+" balloting should be required. Some existing "1+" IXCs do not even have operator service capabilities. Others could not offer "0+" services nationwide as required in a billed party preference system because they lack a nationwide originating network. In still other instances, subscribers (particularly business customers) utilize multiple "1+" IXCs and it is not self-evident which should be selected as the subscribers' preferred OSP. And, finally, it is extremely common for customers even today to have ordered calling card services from an OSP other than the IXC it has selected for "1+" services. If such customers are defaulted to their "1+" IXC, they will be denied the choice of OSPs which they already have made.

Clearly, a separate "0+" balloting would be advisable. Moreover, customers who do not return a ballot should be allocated among participating OSPs according to their "0+" market share at each end office.

CONCLUSION

Billed party preference is an idea that has superficial appeal, but is beset with irresoluble implementation problems. As it is presently conceived, billed party preference would make "0+" calling markedly more complex and time consuming for the vast majority of callers. And the extraordinary expense of the system would drive operator services rates up substantially. All this is entirely unnecessary because the problems addressed by billed party preference were solved when the Commission implemented "dialing party preference" last year. CompTel respectfully submits that the Commission should recognize the many problems inherent in the billed party preference system and decline to adopt it. Failing that, CompTel suggests that the Commission issue a Further Notice of Proposed Rulemaking with its suggested solutions to the many implementation problems identified herein.

Respectfully submitted,

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July 7, 1992

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